IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,	)	
	)	2 CA-CR 2006-0261
Appellee,	)	DEPARTMENT B
	)	
v.	)	MEMORANDUM DECISION
	)	Not for Publication
VIRGIL LEE YOUNG,	)	Rule 111, Rules of
	)	the Supreme Court
Appellant.	)	
	)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20054464

Honorable Michael J. Cruikshank, Judge

AFFIRMED

Terry Goddard, Arizona Attorney General
By Randall M. Howe and Diane Leigh Hunt — Tucson
Attorneys for Appellee

Wanda K. Day — Tucson
Attorney for Appellant

V Á S Q U E Z, Judge.

¶1 A jury found appellant Virgil Young guilty of possession of a narcotic drug for sale and possession of drug paraphernalia, offenses he had committed while on release from confinement in an unrelated matter. After finding he had three historical prior felony convictions, the trial court sentenced Young to an enhanced, substantially mitigated prison term of 10.5 years for possession of a narcotic drug for sale, to be served concurrently with an enhanced, presumptive, 3.75-year term for possession of drug paraphernalia. On appeal, Young argues the trial court erred in denying his motions to suppress and dismiss the charges, claiming his detention and arrest were not supported by reasonable suspicion and probable cause. For the following reasons, we affirm.

Facts and Procedural Background

¶2 Usually, when reviewing a trial court's ruling on a motion to suppress, we only consider the evidence presented at the suppression hearing. *State v. Moore*, 183 Ariz. 183, 186, 901 P.2d 1213, 1216 (App. 1995). Here however, the trial court conducted the suppression hearing simultaneously with the trial, did not make factual findings on the record, and did not expressly deny Young's motions.[1] Therefore, we view the evidence adduced at trial in the light most favorable to sustaining the trial court's rulings on the motions. *See State v. Rosengren*, 199 Ariz. 112, ¶ 2, 14 P.3d 303, 306 (App. 2000).

[1]We note these difficulties were attributable to Young's untimely filing of the motions and the time constraints caused thereby.

¶3 On October 23, 2005, Tucson Police Detective Robert Garcia was driving to his off-duty employment, providing security at a grocery store located at a strip mall near First Avenue and Fort Lowell Road. As he pulled into the mall parking lot, he noticed two vehicles parked close together at an angle in front of a closed restaurant. Garcia observed Young reach into the front driver's side window of one of the vehicles as another man stood beside him toward the rear of the vehicle, apparently acting as a lookout. Garcia drove past the cars, made a U-turn, and parked directly behind one of the vehicles, later determined to be Young's.

¶4 Just before Garcia got out of his vehicle, Young looked at him, quickly opened his car door, and dropped a small white package on the ground. Young appeared startled and was moving his feet around as Garcia walked toward him. When Garcia asked Young who owned the car, Young closed the door and began walking to the front of the car. Garcia told him not to move and called for backup when Young continued walking to the passenger side of the car. Garcia told him "to come back around" and by the time Young complied, additional officers had arrived and Young was handcuffed and placed into a patrol car. Garcia then found a large "rock" of crack cocaine and several small ones still wrapped in tissue and another "good sized" piece underneath the car, next to a couple of pieces that had been crushed on the ground. Approximately ten to fifteen minutes later, Garcia advised

Young, who was seated in the back seat of a patrol car, of his *Miranda*[2] rights. He agreed to speak with Garcia and admitted the crack cocaine was his, and he had intended to sell it.

¶5 On the first day of trial, although he was represented by counsel, Young filed two pro se motions. In the first motion to "suppress/dismiss [for] lack of reasonable suspicion," Young argued the evidence of drugs and drug paraphernalia should have been suppressed because it had been obtained as a result of a detention that had not been supported by reasonable suspicion. He argued that, consequently, the charges should be dismissed. In his second motion, Young argued the charges should be dismissed because Detective Garcia had lacked probable cause to arrest him. After noting the motions were improperly filed because Young was represented by counsel at the time and untimely because they had been filed less than twenty days before trial, in violation of Rule 16.1, Ariz. R. Crim P., the court nevertheless agreed to consider them. However, the court explained that, due to the time constraints caused by the late filing, there was not enough time to conduct a separate hearing. The court informed counsel it would consider the motions based on the testimony presented during trial, adding, "[i]n the event the stop was illegal, [it would] grant the motion in the middle of trial."

¶6 As we previously stated, the court did not expressly rule on the motions. Young asserts that the court implicitly denied them, and we agree. Clearly, the court was aware of Young's motions and had been given the opportunity to consider them. *See id.;*

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[2]*Miranda v. Arizona*, 384 U.S. 436 (1966).

State v. Deschamps, 105 Ariz. 530, 533, 468 P.2d 383, 386 (1970); *State v. Paris-Sheldon*, 214 Ariz. 500, ¶ 22, 154 P.3d 1046, 1053 (App. 2007). Therefore, the trial court implicitly denied Young's motions, and we may consider the propriety of its rulings on appeal.[3]

Discussion

¶7 Young challenges the trial court's denial of his motions to suppress the drug and paraphernalia evidence and dismiss the charges, arguing Detective Garcia lacked reasonable suspicion to detain him and probable cause to make an arrest. We review a trial court's ruling on a motion to dismiss the indictment or suppress evidence for an abuse of discretion. *State v. Rosengren*, 199 Ariz. 112, ¶ 9, 14 P.3d 303, 306-07 (App. 2000). As noted above, we view the facts in the light most favorable to upholding the trial court's ruling. *Id.* ¶ 2. But we review its legal conclusions de novo. *State v. Esser*, 205 Ariz. 320, ¶ 3, 70 P.3d 449, 451 (App. 2003).

Reasonable Suspicion to Detain

¶8 Young first asserts the court erred in denying his motion to "suppress/dismiss [for] lack of reasonable suspicion." He argues the detention began either when Garcia parked his car in such a way as to prevent Young's car from leaving, or when Garcia told him not to move, and at neither time did Garcia have "evidence a crime had been committed [or] . . . that Mr. Young was committing any crime." We review de novo whether the police

[3]Additionally, we note the state has not argued that Young's claims are not ripe for appeal.

had reasonable suspicion to justify an investigatory stop. *State v. Rogers*, 186 Ariz. 508, 510, 924 P.2d 1027, 1029 (1996).

¶9 A person is detained when, under the circumstances, the officer's actions would lead a reasonable person to believe he was not free to leave. *State v. Canez*, 202 Ariz. 133, ¶ 54, 42 P.2d 564, 582 (2002); *see also United States v. Mendenhall*, 446 U.S. 544, 554 (1980). Even limited detentions for investigatory purposes constitute seizures under the Fourth Amendment to the United States Constitution, and they therefore must be supported by reasonable suspicion. *State v. Johnson*, 217 Ariz. 58, ¶ 12, 170 P.3d 667, 670 (App. 2007); *In re Ilono H.*, 210 Ariz. 473, ¶ 4, 113 P.3d 696, 697 (App. 2005); *see also Terry v. Ohio*, 392 U.S. 1, 16 (1968). Evidence derived from detentions not based on reasonable suspicion is "fruit of the poisonous tree" and must be suppressed. *State v. Richcreek*, 187 Ariz. 501, 506, 930 P.2d 1304, 1309 (1997).

¶10 Young contends that the way in which Garcia parked his car blocking Young's vehicle, standing alone, constituted a detention because, at that point, Young was not free to leave. Generally, when a police officer positions his vehicle near an occupied vehicle in such a way as to prevent that vehicle from being driven from the scene, a detention occurs. *See, e.g., People v. Luedemann*, 857 N.E.2d 187, 205 (Ill. 2006); *State v. Roberts*, 977 P.2d 974, 979 (Mont. 1999); *Commonwealth v. Greber*, 385 A.2d 1313, 1316 (Pa. 1978) (plurality opinion); *State v. Bennett*, 814 P.2d 1171, 1175 (Wash. App. 1991). However,

we have found no authority to support Young's contention that when a police officer blocks an unoccupied vehicle, a person standing near it is automatically detained.

¶11 In *State v. Cordray*, 755 P.2d 735, 738-39 (Or. App. 1988), the Oregon Court of Appeals considered whether the defendant had been detained when the officers positioned their vehicle in such a way as to "impede his ability to pull out onto the street." It is unclear from the opinion whether the defendant's car was partially or completely blocked. However, in rejecting the defendant's argument, the court noted, "[i]t is conceivable that the position of an officer's car could be used as a restraint on an individual's liberty if, for example, the individual was prevented from continuing to his destination or in some other way forced to 'alter his course of conduct.'" *Id.* at 738, *quoting State v. Porter*, 589 P.2d 1156, 1157 (Or. App. 1979). But, in reaching its conclusion that no detention had occurred, the court focused on the fact that when the officers parked in front of Cordray's car, he "was already stopped and there was no indication that he wished to move." *Id.*

¶12 Similarly, in *United States v. Kim*, 25 F.3d 1426, 1430-31 (9th Cir. 1994), the Ninth Circuit Court of Appeals concluded the defendant had not been detained when the law enforcement officer only partially blocked the defendant's car and asked the defendant's permission before questioning him. *Id.* In a footnote, the court stated that, "[e]ven if [the officer] had more completely blocked the departure of Kim's automobile, Kim enjoyed greater latitude during his initial conversations with [the officer] to depart, even if

on foot," than in other cases in which the court had found the defendant had not been detained. *Id.* at 1431 n.2; *see also United States v. $25,000 U.S. Currency*, 853 F.2d 1501, 1504-05 (1988) (no detention where suspect approached from two sides and backed up against pillar inside airport terminal).

¶13 Here, although Young's car was completely blocked, he was not inside it at the time Garcia pulled in behind it. And, there is no indication that Young had tried to get in the car and leave. Therefore, by blocking Young's vehicle, Garcia had not prevented him from "continuing to his destination," nor had Garcia forced Young to "alter his conduct" in any way. *See Cordray*, 755 P.2d at 738-39. The mere fact Garcia had parked his vehicle behind Young's, standing alone, was insufficient to lead a reasonable person to believe he had been detained.

¶14 However, even assuming arguendo that the way in which Garcia had parked his car constituted a detention, the detention was supported by reasonable suspicion. Reasonable suspicion exists when a police officer has a particularized suspicion, based on articulable reasons, that a particular individual is involved in criminal activity. *State v. Graciano*, 134 Ariz. 35, 37, 653 P.2d 683, 685 (1982). Our determination of whether reasonable suspicion exists is based on the totality of the circumstances, taking into consideration objective factors like the suspect's conduct and appearance, location and surroundings, and time of day, as well as the officer's relevant experience, training, and knowledge. *See id.; State v. Fornof*, ___ Ariz. ___, ¶ 6, 179 P.3d 954, 956 (App. 2008);

State v. Teagle, 217 Ariz. 17, ¶¶ 25-26, 170 P.3d 266, 272-73 (App. 2007); *see also United States v. Arvizu*, 534 U.S. 266, 275-77 (2002).

¶15 Garcia testified that as he was driving toward the grocery store, he noticed two vehicles in front of a closed business, one of which was parked at an angle and not in one of "the designated parking spaces as the car next to it." As he got closer, Garcia "could see a gentleman reaching into the front, through the front window of the car, and right behind him by the rear door was another gentleman just standing there, . . . [who] appeared to be a lookout." Then, "[a]s [Garcia] drove up . . . [Young] turned around . . . and looked at [him] startled." And "[j]ust as [Garcia] parked[,] . . . not thinking [he] saw it" the men opened the driver's side door, and Young dropped a white package on the ground in between the open door and the car door frame.

¶16 Although Garcia did not expressly state that the package was indicative of drug activity, he later testified that as he had gotten out of the car, he had focused his attention on Young's hands because he was concerned about weapons because they are "very common with persons that are involved with drugs." Thus, we can infer Garcia's observations led him to suspect he had interrupted a drug transaction. *See Rosengren*, 199 Ariz. 112, ¶ 9, 14 P.3d at 307 (appellate court views evidence and reasonable inferences derived therefrom in light most favorable to trial court's ruling). And we conclude, as a matter of law, based on the totality of the circumstances, Garcia had reasonable suspicion

that Young was currently involved in illegal activity before he exited his vehicle.[4] *See Graciano*, 134 Ariz. at 37, 653 P.2d at 685; *Teagle*, 217 Ariz. 17, ¶¶ 25-26, 170 P.3d at 272-73; *see also Rogers*, 186 Ariz. at 510, 924 P.2d at 1219 (appellate court reviews existence of reasonable suspicion de novo). Therefore, the trial court did not abuse its discretion in denying Young's motion to suppress evidence for lack of reasonable suspicion and failing to dismiss the charges. *See Rosengren*, 199 Ariz. 112, ¶ 9, 14 P.3d at 306-07.

Probable Cause to Arrest

¶17 Young next argues the trial court abused its discretion in denying his motion to dismiss for lack of probable cause. In his motion, Young generally argued that Garcia had lacked probable cause to arrest him, and therefore he was entitled to a dismissal of all charges. On appeal, he contends a de facto arrest occurred when "[he] submitted to the custody of Detective Garcia when he was told not to move and where to move by Detective Garcia," and Garcia did not have probable cause to support an arrest at that time. We review the trial court's ruling for an abuse of discretion. *State v. Navarro*, 201 Ariz. 292, ¶ 12, 34 P.3d 971, 974 (App. 2001). And we apply the law to the facts de novo in determining whether probable cause existed. *State ex rel. McDougall v. Superior Court*, 191 Ariz. 182, 186, 953 P.2d 926, 930 (App. 1997).

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[4]Having made this determination, we need not consider Young's alternative argument that reasonable suspicion had not arisen when Garcia later detained Young by telling him not to move.

¶18 "An arrest is made by an actual restraint of the person to be arrested, or by his submission to the custody of the person making the arrest." A.R.S. § 13-3881(A). Generally, "[a]n arrest occurs when 'the suspect's liberty of movement is interrupted and restricted by the police.'" *State v. Miller*, 186 Ariz. 314, 320, 921 P.2d 1151, 1157 (1996), *quoting State v. Ault*, 150 Ariz. 459, 464, 724 P.2d 545, 550 (1986). However, not every restriction on a person's liberty constitutes an arrest. As we have already discussed, police officers may conduct limited detentions for investigatory purposes without probable cause, so long as they are supported by reasonable suspicion. *See Terry*, 392 U.S. at 27; *State v. Box*, 205 Ariz. 492, ¶ 16, 73 P.3d 623, 628 (App. 2003). Furthermore, the physical detention of a suspect, by handcuffing him and placing him in a police car while the officer investigates further does not necessarily constitute an arrest. *See State v. Blackmore*, 186 Ariz. 630, 633, 925 P.2d 1347, 1350 (1996); *State v. Aguirre*, 130 Ariz. 54, 56, 633 P.2d 1047, 1049 (App. 1981).

¶19 In *Aguirre*, we held that the defendant in that case was not under arrest simply because he had been handcuffed and placed in a patrol car after he had "acted evasively and hidden" earlier in the investigation. 130 Ariz. at 56, 633 P.2d at 1049. We determined that the detention did not constitute an arrest because it was reasonable for the officer to detain the defendant while the investigation continued and that the added restraint had been reasonable in light of the risk of flight. *Id.*

¶20 Similarly, in *Blackmore*, our supreme court held that a defendant's submission to custody did not remove the risk of flight or safety concerns for the officer, where the "[d]efendant's vehicle was the only one in the alley, . . . was parked a short distance from the site of the detention[,] . . . [and the] Officer . . . could not know whether defendant, whom he reasonably suspected of committing the burglary, was armed." 186 Ariz. at 634, 925 P.2d at 1351. Therefore, it found no arrest had occurred when the officer "drew his gun and ordered defendant to lie on the ground, then handcuffed him, helped him to his feet, walked him to the patrol car, and searched him," because these measures had been reasonable in order to protect the officer's safety and prevent the defendant from fleeing. *Id.* at 631, 634, 925 P.2d at 1348, 1351.

¶21 Here, as Garcia approached Young, he asked who owned the car Young had been reaching into. Young "mumbled something" in response and then began to move toward the front of the car. Garcia told Young to stand still and not to move, but Young continued to walk to the other side of the car, and when Garcia told him to come back around, Young stated he needed to retrieve his cellular telephone to call the owner of the car. It was not until after Garcia had asked Young to come back to talk to him for a third time that Young complied. At that time, Garcia handcuffed Young, and another officer, who had just arrived, placed him in the back of a patrol car.

¶22 The officers' actions in restraining Young were justified under the circumstances and did not transform the detention into an arrest. Young had walked away

from Garcia and attempted to get something out of the car, despite Garcia's request that he stand still. Garcia testified he had been concerned about weapons, due to his suspicion that Young had been engaged in drug activity. Based on Young's behavior, Garcia's concerns about his safety and the possibility that Young would flee were reasonable; thus the continued detention was reasonably related to the scope of the investigation. *See State v. Romero*, 178 Ariz. 45, 50, 870 P.2d 1141, 1146 (App. 1993) ("[T]he fact that an investigating officer may have the person 'under his control' [does not] diminish the vulnerability of the officer . . . when the individual still could bolt and retrieve any weapon(s) in the vehicle."); *see also Blackmore*, 186 Ariz. at 634, 925 P.2d at 1351; *Aguirre*, 130 Ariz. at 56, 633 P.2d at 1049. Therefore, Young was not under arrest, neither when Garcia told him "not to move and where to move," as he contends, nor at the time he was handcuffed and placed in the patrol car, and probable cause was not required at that time.

¶23 However, immediately after Young had been placed in the patrol car, Garcia found several rocks of crack cocaine on the ground and wrapped in tissue where he had seen Young drop the white package and shuffle his feet. Garcia also had observed large denomination bills lying on the front seat of Young's vehicle in plain view. Therefore, Young's subsequent arrest was supported by probable cause. *See State v. Hoskins*, 199 Ariz. 127, ¶ 30, 14 P.3d 997, 1007-08 (2000), *supp. op.*, 204 Ariz. 572, 65 P.2d 953 (2003) ("A police officer has probable cause [to arrest] when reasonably trustworthy information

and circumstance would lead a person of reasonable caution to believe that a suspect has committed an offense."). Thus, the trial court did not abuse its discretion in denying his motion to dismiss.

Disposition

¶24 For the reasons stated above, we affirm.

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GARYE L. VÁSQUEZ, Judge

CONCURRING:

_____
PETER J. ECKERSTROM, Presiding Judge

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PHILIP G. ESPINOSA, Judge